



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200401638

Issuance Date:

May 2, 2006

Stream:

Shelby Creek

Closing Date:

June 1, 2006

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the Commonwealth of Kentucky's Division of Water to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Premier Elkhorn Coal Company
PO Box 130
Myra, Kentucky 41549

LOCATION: The proposed project is located in tributaries of Shelby Creek of the Levisa Fork of the Big Sandy River, near Esco, Pike County, Kentucky (latitude 37° 22' 01" and longitude 82° 33' 07") as depicted on the attached location map.

DESCRIPTION OF THE PROPOSED WORK: The applicant obtained a state Surface Mining Control and Reclamation Act permit (898-0682) from the Kentucky Department for Natural Resources Division of Mine Reclamation and Enforcement and a Nationwide Permit 21 on November 19, 2004 for the existing Esco Mine. The applicant is requesting authorization to construct two additional hollow fill spoil storage areas, associated rock check dams and four temporary sediment ponds to facilitate resource removal using a combination of contour strip, augur/highwall and area mining.

Hollow fill # 2B and ponds # 3 and 3A are proposed within the Bartley Hollow Watershed. The proposed hollow fill and associated rock check dam would permanently impact approximately 1,750 linear feet of intermittent tributaries and approximately 3,120 linear feet of ephemeral tributaries, discharging approximately 519 cubic yards of material into jurisdictional streams. The construction of the two sediment ponds would discharge approximately 96 cubic yards of material below the ordinary high water mark of an intermittent tributary, impacting approximately 550 linear feet. Indirect impacts associated with sediment transport have been avoided by designing the sediment pond immediately downstream of the toe of the valley fill.

Hollow fill # 10 and pond # 37 are proposed within the Robinson Creek Watershed. Construction of the hollow fill and associated rock check dam would discharge approximately 154 cubic yards of material below the ordinary high water mark of an ephemeral tributary to Robinson Creek, permanently impacting approximately 1,040 linear feet. Construction of the sediment pond would temporarily impact approximately 400 linear feet of an intermittent reach of the unnamed tributary. Indirect impacts associated with sediment transport have been avoided by designing the sediment pond immediately downstream of the toe of the valley fill.

Sediment pond 9A would result in the direct impact of approximately 350 linear feet of an intermittent reach of Peter Branch. In addition, approximately 130 linear feet of stream would be indirectly impacted through sediment transport from the toe of an existing sediment pond to the proposed sediment pond.

ALTERNATIVE ANALYSIS: The project is not water dependent and does not require access to or siting within waters of the United States to fulfill its basic purpose. Practicable alternatives that do not involve waters of the United States are presumed to be available unless clearly demonstrated otherwise. The applicant is required to provide an alternative analysis that must overcome that presumption prior to receiving authorization for the placement of fill material. The applicant has submitted the required alternative analysis and it is currently being reviewed.

MITIGATION PLAN: The applicant submitted a compensatory mitigation plan (CMP) to compensate for the proposed unavoidable permanent impacts to approximately 5,910 linear feet of stream and temporary impacts to approximately 1,300 linear feet of jurisdictional streams regulated by the Corps of Engineers. The applicant proposes to compensate for these unavoidable impacts by performing on-site, in-kind restoration.

The Eastern Kentucky Stream Assessment Protocol (EKSAP) has been utilized to assess the proposed stream impacts and compensatory mitigation. The EKSAP figures indicate the proposed impacts would result in a cumulative loss of 861.2 Ecological Integrity Units (EIU) and the proposed compensatory mitigation would result in the functional lift of 2169.0 EIUs.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the Commonwealth Kentucky's Division of Water.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This public notice serves as coordination with the Kentucky Heritage Council's State Historic Preservation Office for their review regarding historic properties. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

The proposed project lies within the distribution range of the endangered Indiana bat (*Myotis sodalis*). The project area was surveyed for the presence of the Indiana bat. USFWS concurred with the survey findings, Indiana bats are not utilizing the permit area for summer roost or forage habitat. A winter habitat assessment was conducted in 2004 for the original mining application. According to this information, no open, abandoned portals suitable for bat use were located in the project area. USFWS indicated in correspondence dated April 26, 2005 they concur the proposed amendment area would not likely adversely affect winter habitat for the Indiana bat.


The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species that has been determined to be critical.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed

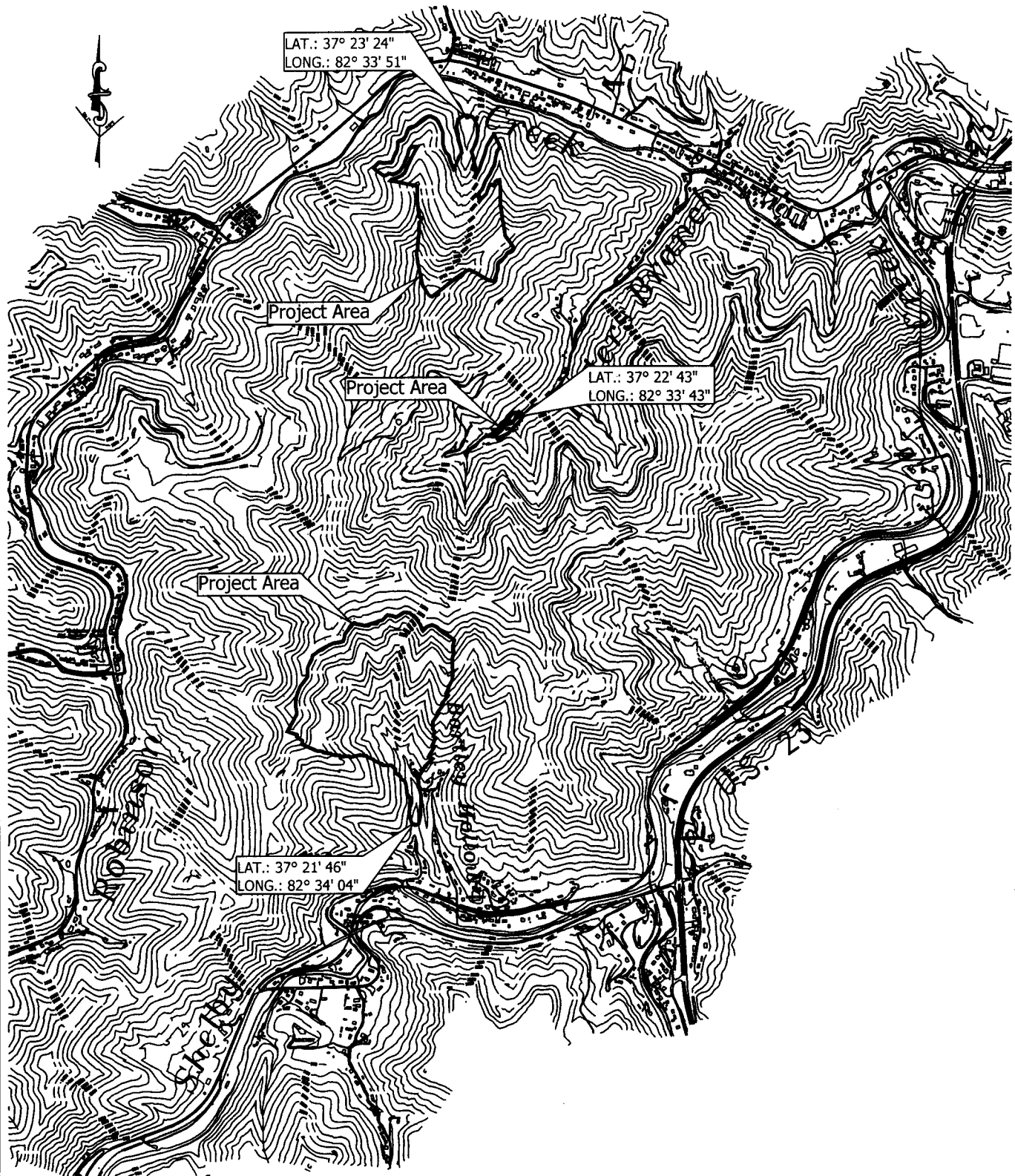
work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Ms. Tammy R. Fudge, Regulatory Project Manager, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, you may reach Ms. Tammy R. Fudge of the South Regulatory Section at 304-399-5710 or tammy.r.fudge@usace.army.mil.


Ginger Mullins, Chief
Regulatory Branch

(K)



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Premier Elkhorn Coal Co.
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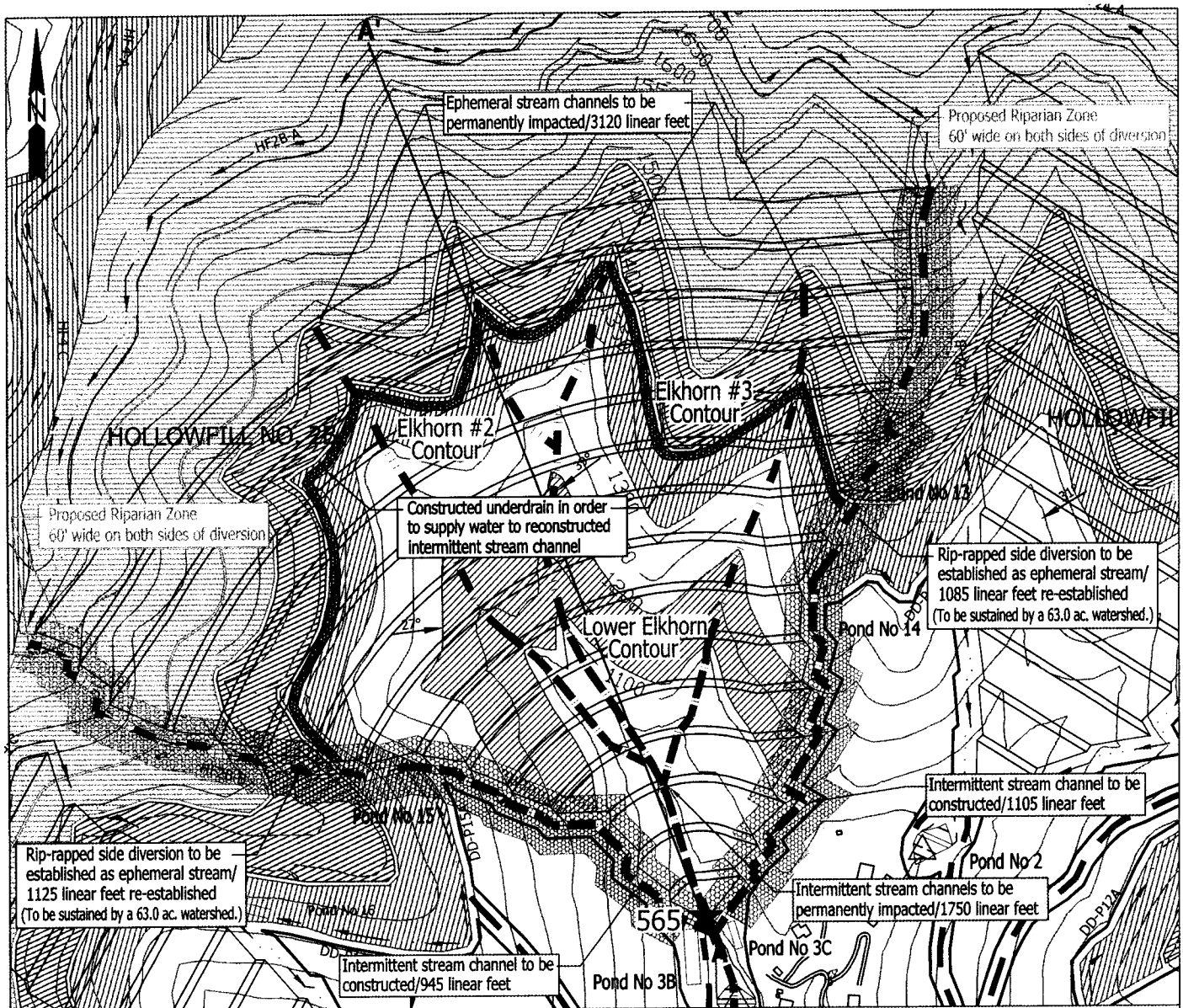
Premier Elkhorn Coal Company
P.O. Box 130
Myra, Kentucky 41549

General Location Map
Pikeville/Dorton Quadrangle
USACE Project #20050003
Jurisdictional Determination (JD) Sheet 1 of 8

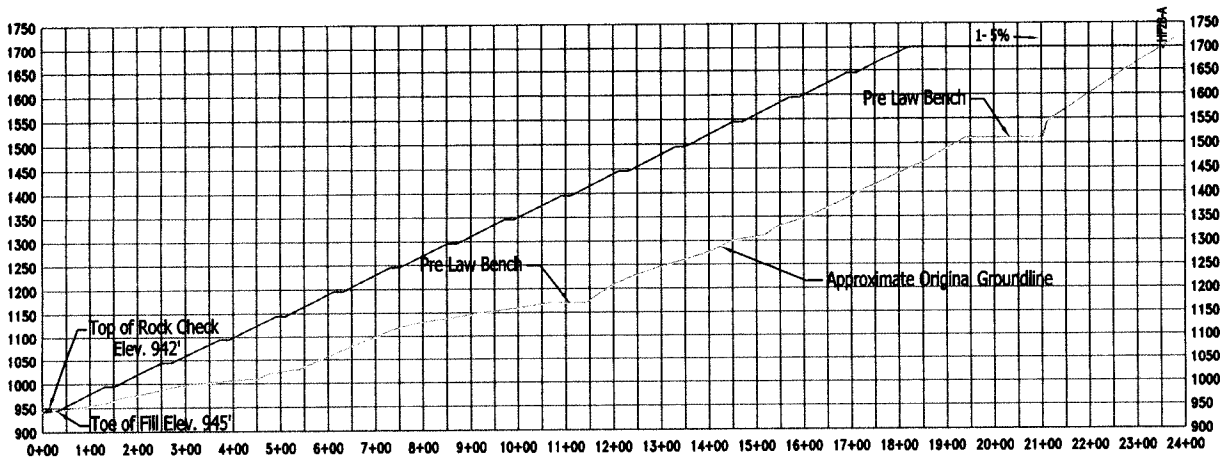
ALPINE

CONSULTING & ENGINEERING, INC.

P.O. BOX 3203
Pikeville, KY 41502
Phone: (606) 437-6223



PLAN VIEW



PROFILE A-A'

Premier Elkhorn Coal Company

P.O. Box 130
Myra, Kentucky 41549

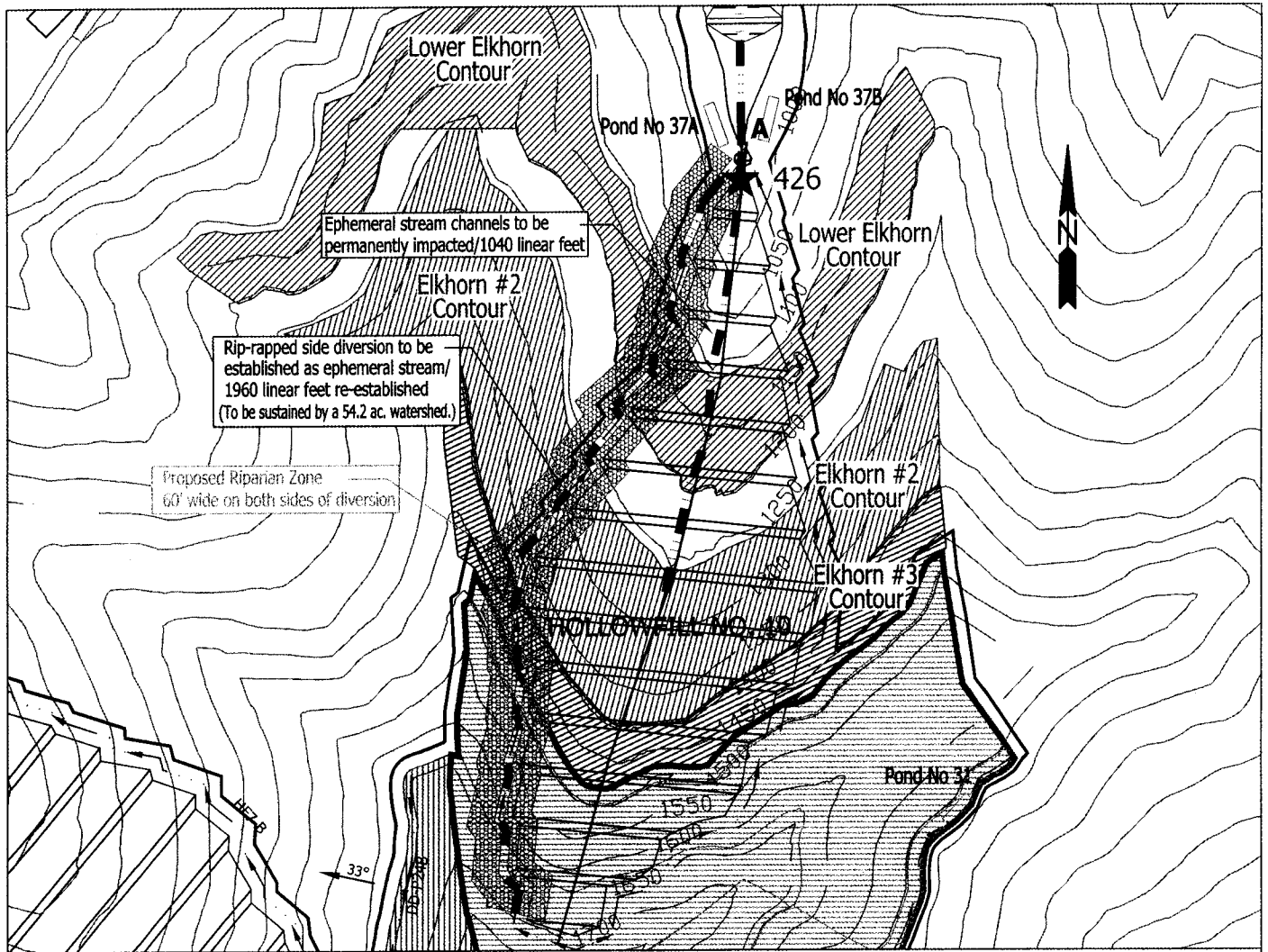
Projected Stream Replacement

Hollow Fill #2B
C.O.E. Individual Permit Application
KYEPPC Permit #898-0682 Am. #1

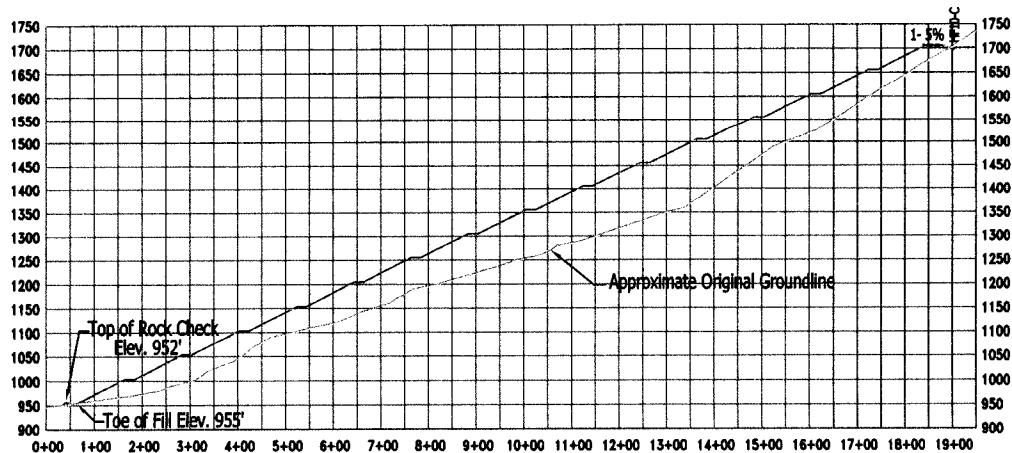
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PLAN VIEW



PROFILE A-A'

Premier Elkhorn Coal Company

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Projected Stream Replacement

Hollow Fill #10
C.O.E. Individual Permit Application
KYEPPC Permit #898-0682 Am. #1

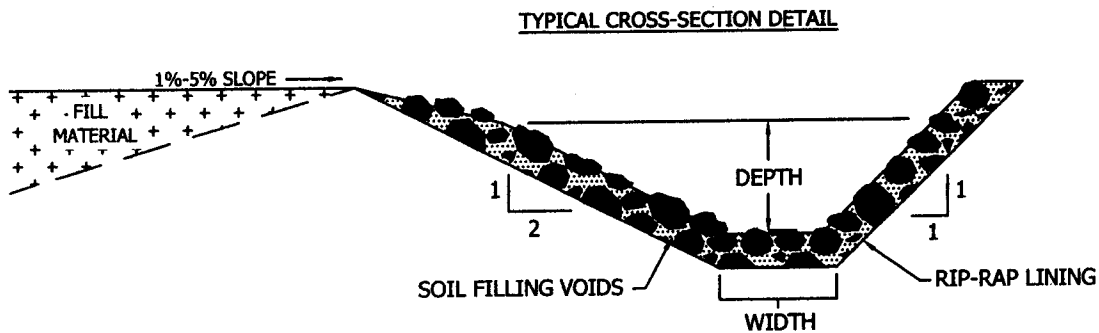
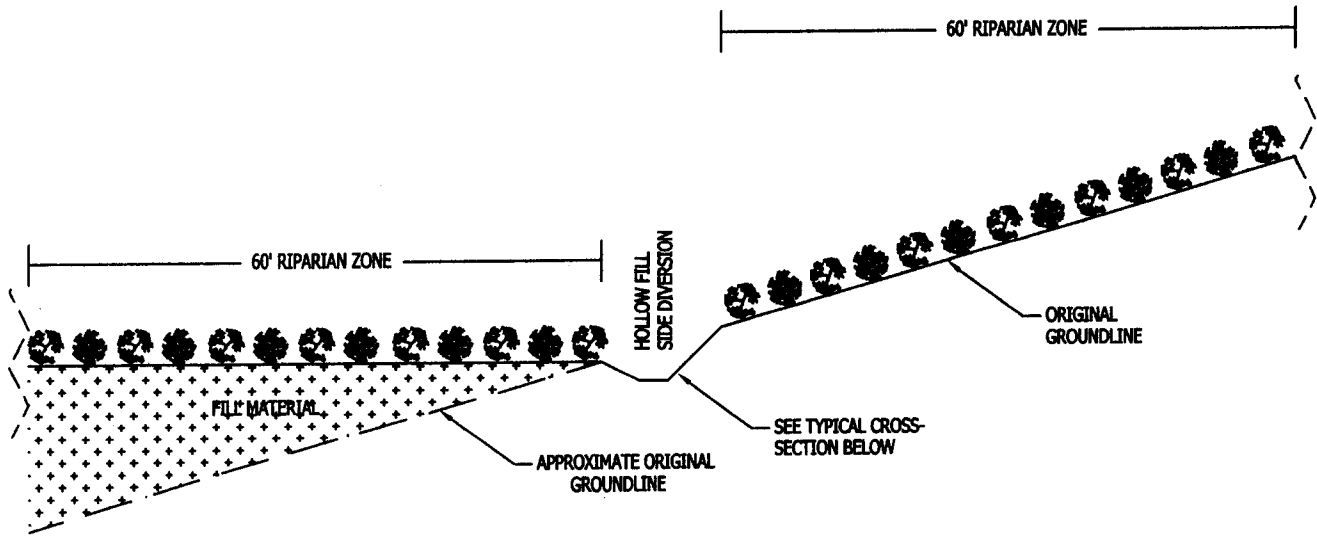
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PERIMETER DITCH DESIGN



NOTES:

- SIDE DIVERSION DITCHES WILL BE RIP-RAPPED.
- VOIDS IN RIP-RAPPED MATERIAL WILL BE FILLED WITH MOST IMPERMEABLE MATERIAL AVAILABLE.
- FILLING OF THE VOIDS WILL CREATE A MORE NATURAL STREAM CHANNEL AND PROVIDE AN ENHANCED AQUATIC HABITAT ENVIRONMENT.
- DIVERSION DIMENSIONS MAY VARY DEPENDENT UPON THE NATURAL STREAM CONFIGURATION. HOWEVER, DUE TO KYEPPC STANDARDS, THE DIVERSION WILL, AT A MINIMUM, SUPPORT A 100-YEAR/24-HOUR STORM EVENT.

Premier Elkhorn Coal Company

P.O. Box 130

Myra, Kentucky 41549

Typical Side Diversion Design
C.O.E. Individual Permit Application
KYEPPC Permit #898-0682 Am. #1

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